

**From:** Rick Russell  
**To:** Microsoft ATR  
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**Subject:** Microsoft Settlement

Hi. A quick comment about the Microsoft/DOJ Settlement.

I'm concerned about the following section of the settlement:

- > A. Microsoft shall not retaliate against an OEM by altering
- > Microsoft's commercial relations with that OEM, or by withholding
- > newly introduced forms of non-monetary Consideration (including but
- > not limited to new versions of existing forms of non-monetary
- > Consideration) from that OEM, because it is known to Microsoft that
- > the OEM is or is contemplating:

...

- > (2) shipping a Personal Computer that (a) includes both a Windows
- > Operating System Product and a non-Microsoft Operating System, or (b)
- > will boot with more than one Operating System; or

If I read this section correctly (and I readily admit that I am no lawyer), Microsoft is prohibited from putting commercial pressure ("retaliate", "altering commercial relations", etc.) on companies that choose to ship a non-Microsoft operating system and a Microsoft operating system on the same personal computer.

Let's say I sell 5000 computers with Windows, and 1000 with Linux. Another company sells 4000 with Windows, and 1000 with Windows and Linux. Both companies purchased the same number of Windows licenses, but the first company is not protected by the prohibition because they didn't install Linux and Windows on the same computers. The second company is protected, because all of their non-Microsoft offerings include the corresponding Windows product on the same computers.

And what about computers that can't run Windows? Apple, for example, is a consumer of Microsoft's Office for Macintosh product (in fact, they sell it with new Macintoshes). But you can't run Windows on an Apple Macintosh, you can ONLY run the Macintosh operating system. By definition, Apple cannot comply with this clause of the prohibition to protect itself from commercial retaliation. Can Microsoft therefore retaliate against Apple (e.g., by charging more money for copies of Office that Apple resells to customers), in an attempt to undermine Apple's business and force its customer to move to Windows PCs?

I will grant that this prohibition does not explicitly permit Microsoft to "retaliate" against companies that choose to ship non-Microsoft operating systems without Windows. But I don't understand why Microsoft

gets special treatment in this regard. Surely the prohibition should be broadened to the general case: that Microsoft cannot retaliate against a customer simply because that customer chooses to do also purchase products from a competitor. Any computers that a company sells without a Microsoft operating system are not Microsoft's concern.

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